

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re

CIRCUIT CITY STORES, INC., et al.,

Debtors.

Chapter 11

Case No. 08-35653 (KRH)

Jointly Administered

**RESPONSE OF CATELLUS OPERATING LIMITED PARTNERSHIP TO
LIQUIDATING TRUSTEE'S THIRTY-NINTH OMNIBUS OBJECTION TO
LANDLORD CLAIMS (REDUCTION OF CERTAIN INVALID CLAIMS MITIGATION)**
(Claim No. 12328)

This response is filed by Catellus Operating Limited Partnership, a Delaware limited partnership ("Catellus") to the Liquidating Trustee's Thirty-Ninth Objection to Landlord Claims (the "Objection"). In the Objection, the Liquidating Trustee asserts that Catellus' Claim No. 12328 filed in the amount of \$5,149,326.69 (the "Proof of Claim") should be partially invalidated and reduced and allowed in the sum of \$2,082,350.23.¹

The Liquidating Trustee's objection asserts that the amount asserted by Catellus as rejection damages in its Proof of Claim should be disallowed because Catellus has not met its burden to mitigate damages under applicable law.

¹ This is the second objection filed by the Liquidating Trustee to Catellus' Proof of Claim No. 12328. The first objection (17th omnibus-partially invalid) filed on February 28, 2011 was responded to by Catellus with details regarding the objected to components of its claim but has yet to be resolved.

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Catellus disputes this Objection and in further support of its Proof of Claim submits along with this response the Declaration of Elizabeth Summerer, the Property Manager for the premises leased by Catellus to the Debtor. *See Exhibit 1.* As a response, Catellus submits the following:

Background Facts

1. Catellus owns the real estate commonly known as 501 South Cheryl Lane, City of Industry, California, consisting of approximately 449,049 sq. ft. in which Circuit City operated a warehouse and distribution center (hereinafter the “Premises”). The Premises were leased to Circuit City Stores, Inc. (“Circuit City”) originally by Catellus Development Corporation, as landlord pursuant to a lease dated September 19, 1990 (the “Lease”) which is attached to the original Proof of Claim. The Claimant herein, Catellus Operating Limited Partnership, a Delaware limited partnership, is the successor-in-interest to Catellus Development Corporation, a Delaware corporation, the original landlord under the Lease.

2. Pursuant to an Order entered in this case on April 1, 2009 (Docket No. 2882), the Lease was rejected effective as of March 21, 2009. At that time the remaining term of the Lease extended through September 30, 2010. Circuit City was current with its post-petition obligations to Catellus through March 21, 2009. Based on the rejection of the Lease as of March 21, 2009, Catellus calculated its total rejection damages arising out of the rejection of the Lease for the remaining term of the Lease from March 21, 2009 through September 30, 2010 as \$4,435,464.02. These gross rejection damages, prior to the application of the Landlord’s cap under Section 502(b)(6) are set out in detail in Exhibit 2 attached hereto. After applying the Landlord’s cap under Bankruptcy Code Section 502(b)(6)(A), the claim for rejection damages for future rents asserted in the Proof of Claim filed by Catellus was \$3,066,976.40.

Mitigation Efforts

3. Immediately after the rejection of the Lease, Catellus engaged in significant repairs to the Premises that were necessary prior to re-letting the Premises as a result of the damage to the Premises by Circuit City resulting from its move-out. The extent of the damage did not allow Catellus to put the Premises immediately on the market for re-lease. These initial make-ready costs total \$439,015.05. *See* Exhibit 1, Exhibit A.

4. While the repair work was underway, Catellus advertised the future availability of the building through signage on the building. As a result of this advertising, Catellus was approached by South Bay Distribution, Inc. ("South Bay Distribution") to rent the Premises. However, South Bay Distribution was unwilling to enter a long term lease of the entire Premises. As a result, Catellus entered into a month-to-month arrangement for a portion of the Premises with South Bay Distribution. This month-to-month arrangement commenced on August 17, 2009 and continued through July of 2010. The month-to-month arrangement provided for a sliding scale of base rent, which allowed South Bay Distribution to use the portion of the distribution center that it required from time to time. The gross rental was adjusted monthly based on the actual usage during that month by South Bay Distribution. A copy of that month-to-month lease is attached to the declaration of Elizabeth Summerer submitted herewith. *See* Exhibit 1, Exhibit B.

5. At the termination of that initial month-to-month arrangement, Catellus entered into a second month-to-month lease agreement with South Bay Distribution, Inc. dated as of August 29, 2010 on similar terms to the prior agreement that ran through the end of the Circuit City Lease term. As a result of these two month-to-month agreements, Catellus generated revenue of \$1,099,382.17. After applying this mitigation amount to the gross rejection damages

as set forth in the Catellus Proof of Claim, the net rejection damages after mitigation are \$3,336,081.85 (\$4,435,464.02 minus \$1,099,382.17). This sum remains in excess of the Landlord's cap under Bankruptcy Code Section 502(b)(6)(A) that is applicable to this Proof of Claim which totals \$3,066,976.46.

6. Thus, despite Catellus' reasonable efforts to mitigate its damages in obtaining a substitute tenant as promptly as possible, market conditions did not allow Catellus to mitigate its damages below the Landlord's cap for its Lease Claim and, as a result, the Claim asserted by Catellus for the Lease is not subject to any reduction despite the reasonable mitigation efforts of Catellus.

WHEREFORE, Catellus requests that the Court deny the Liquidating Trustee's objections to Catellus' Proof of Claim No. 12328 and allow that claim in the amended amount of \$4,933,976.84 as set forth in Catellus' prior response to the liquidating Trustee's 17th Omnibus Objection (docket item 10264) previously filed herein.

Dated: June 20, 2012

CHRISTIAN & BARTON, LLP

/s/ Jennifer M. McLemore

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Counsel for Catellus Operating Limited Partnership

CERTIFICATE OF SERVICE

I, Jennifer M. McLemore, hereby certify that on the 20th day of June 2012, a true and correct copy of the foregoing Response of Catellus Operating Limited Partnership to Liquidating Trustee's Thirty-Ninth Omnibus Objection to Landlord Claims (Reduction of Certain Invalid Claims-Mitigation) (Claim No. 12328 has been served electronically using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter and emailed separately to the following:

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/s/ Jennifer M. McLemore

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